



Linda S. Adams  
Secretary for  
Environmental  
Protection

# California Regional Water Quality Control Board

## Central Coast Region Enforcement Unit



Arnold Schwarzenegger  
Governor

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September 1, 2010

**CERTIFIED MAIL 7008 1140 0003 4708 7745  
RETURN RECEIPT REQUESTED**

U.S. Wilson  
Cuyama Community Services District  
P.O. Box 368  
New Cuyama, CA 93254

**SETTLEMENT AGREEMENT AND STIPULATION FOR ADMINISTRATIVE CIVIL LIABILITY  
ORDER AND ORDER NO. R3-2010-0023, CUYAMA COMMUNITY SERVICES DISTRICT,  
NEW CUYAMA, SANTA BARBARA COUNTY, WDID# 3 421003001**

Dear Mr. Wilson:


Please find attached for Cuyama Community Services District's (District) review and response *Settlement Agreement and Stipulation for Administrative Civil Liability Order; Order No. R3-2010-0023* (Order). In response to the letter dated October 30, 2009, submitted on the District's behalf by its environmental consultant Dudek, the Central Coast Water Board enforcement staff concurs with the District's request to resolve the alleged violations by directing \$18,000 to the Wastewater Treatment Plant Effluent Disinfection Project as a Compliance Project pursuant to California Water Code section 13385. Please review the proposed settlement agreement within the Order and indicate the District's agreement by signing and dating in the spaces provided on page 10, and returning it **by September 22, 2010**.

Upon receipt of the District's signed agreement, Central Coast Water Board enforcement staff will publish on its website a 30-day notice of the proposed resolution. If no comments are received within the 30-day period, and unless there are new material facts that become available to the Central Coast Water Board, the Executive Officer will execute the Order as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, the agreement may be withdrawn and a hearing for the Central Coast Water Board to consider the matter may be publicly noticed. Central Coast Water Board enforcement staff will provide the District with further information as directed by the Executive Officer.

If the District has questions on this matter, please contact Todd Stanley **at (805) 542-4769, or [tstanley@waterboards.ca.gov](mailto:tstanley@waterboards.ca.gov)**, Harvey Packard at (805) 542-4639, or Central Coast Water Board enforcement staff attorney, Yvonne West, at (916) 341-5445.

Sincerely,

  
Michael J. Thomas  
Assistant Executive Officer

**California Environmental Protection Agency**



Recycled Paper

Enclosure: Settlement Agreement and Stipulation for Administrative Civil Liability Order No. R3-2010-0023, with attachments A, B, and C

cc: Jane Gray  
Dudek  
621 Chapala Street  
Santa Barbara, CA 93101

Michael Thomas (via email)  
Assistant Executive Officer  
Central Coast Water Board

Yvonne West (via email)  
Staff Counsel  
Office of Enforcement  
State Water Resources Control Board

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

In the matter of:

Cuyama Community Services  
District

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**Order No. R3-2010-0023  
Settlement Agreement and Stipulation  
For Administrative Civil Liability Order;  
Order**

**INTRODUCTION:**

This Settlement Agreement and Stipulation for Administrative Civil Liability Order (hereafter Stipulation) is entered into by and between the enforcement staff of the Central Coast Regional Water Quality Control Board (Enforcement Team), and Cuyama Community Services District (Discharger) (collectively, Parties) and is presented to the Executive Officer of the Central Coast Water Board for adoption as an Order (Order) by settlement, pursuant to Government Code section 11415.60 and pursuant to the authority delegated to the Executive Officer by the Central Coast Regional Water Quality Control Board (Central Coast Water Board).

The Enforcement Team has alleged violations against the Discharger as set forth in Expedited Payment Letter No. R3-2009-0066 dated October 21, 2009, which is attached hereto as Exhibit "A" (Expedited Payment Letter).

**RECITALS:**

1. Pursuant to California Water Code Section 13385, the Central Coast Water Board shall impose a minimum civil liability of three thousand dollars (\$3,000) for each violation identified in the Expedited Payment Letter for a total minimum liability of \$18,000.
2. California Water Code section 13385(k) states:
  - (1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

3. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code ("CWC") section 13385 set forth in the Expedited Payment Letter, the Parties have agreed to the imposition of \$18,000 in liability against the Discharger. Discharger agrees to direct the entire \$18,000 to fund the compliance project as described in more detail below in Paragraph 11.

#### **STIPULATIONS:**

The Parties stipulate to the following:

#### **4. MATTERS ADDRESSED BY STIPULATION**

Upon adoption by the Central Coast Water Board as an Order, whether directly or through the authority delegated to its Executive Officer, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Expedited Payment Letter or which could have been asserted based on the specific facts alleged in the Expedited Payment Letter against Discharger and its subsidiaries, corporate parents, affiliates, successors, heirs, assigns, and their officers, directors, partners, employees, representative agents, and attorneys, as of the effective date of the Expedited Payment Letter. The provisions of this Paragraph are expressly conditioned on the Discharger's full satisfaction of the obligations described in Paragraph 11.

**5. WAIVER OF RIGHT TO PETITION**

The Parties covenant and agree that they will not contest the Order before the Central Coast Water Board, the State Water Resources Control Board, or any court.

**6. SUFFICIENCY OF PROCESS**

The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties, as reflected in this Stipulation and Order, will be adequate. In the event procedural objections are raised prior to this Stipulation becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

**7. DEFINITIONS**

"Designated Water Board Representative" – the representative of the Regional Water Quality Control Board responsible for oversight of the compliance project.

"Enforcement Coordinator" - the person on the Regional Water Quality Control Board staff who is responsible for enforcement coordination.

"Milestone Requirement" – a requirement with an established time schedule for meeting/ascertaining certain identified measurements of completed work.

"Compliance Project Completion Date" – the date in which the Compliance Project will be completed in its entirety.

**8. ADMINISTRATIVE CIVIL LIABILITY**

Discharger shall be subject to administrative civil liability in the amount of \$18,000, the total of which will be directed to a compliance project (Compliance Project Amount), and will be treated as a Suspended Administrative Civil Liability.

**9. FUNDING OF COMPLIANCE PROJECTS**

Discharger agrees to direct the entire Compliance Project Amount to fund the compliance project as described in more detail below in Paragraph 11. Discharger shall submit proof that the Compliance Project Amount was directed to the compliance project before thirty (30) days after the effective date of the Order.

## **10. DESCRIPTION OF THE COMPLIANCE PROJECT**

The Enforcement Team issued Expedited Payment Letter No. R3-2009-0066 to the Discharger for wastewater effluent bromodichloromethane and dibromodichloromethane violations. The Discharger received funding for its Wastewater Treatment Plant Effluent Disinfection Project (WTPED) under Proposition 50. The project is designed to fully resolve these effluent violations. The WTPED proposes to reduce disinfection byproducts by modifying the existing facilities to allow increased control of chlorine addition, with the addition of ammonia, to create chloramines. The WTPED also incorporates an ultraviolet (UV) light disinfection process to replace the chlorine disinfection process. These changes were designed to and should resolve the bromodichloromethane and dibromodichloromethane problems. The Total Prop 50 Grant Funds approved for WTPED are \$279,800. The Discharger is matching \$38,859 for a total project cost of \$318,659. The project completion date is February 2012 (Compliance Project Completion Date).

The Enforcement Team previously issued Administrative Civil Liability Order No. R3-2009-0005, which was adopted on February 5, 2009. The Order was issued for wastewater effluent bromodichloromethane and dibromodichloromethane violations that occurred between September 1, 2007, and September 30, 2007. The mandatory penalty of \$6,000 was directed to the WTPED project as described in this order. The Discharger proposes to direct the \$18,000 mandatory penalty alleged in the Expedited Payment Letter toward satisfying a portion of the remaining \$32,859 of required matching funds for the WTPED. A project description is attached hereto as Exhibit "B".

## **11. REPRESENTATIONS AND AGREEMENTS REGARDINGS COMPLIANCE PROJECTS**

### **A. Discharger performing compliance project**

#### **i. Representation of the Discharger**

As a material consideration for the Central Coast Water Board's acceptance of this Stipulation, the Discharger represents that it will utilize the funds outlined in Paragraphs 9 and 10 to implement the compliance project in accordance with the Schedule for Performance (attached hereto as Exhibit "C"). The Discharger understands that its promise to implement the compliance project, in its entirety and in accordance with the schedule for

implementation, is a material condition of this settlement of liability between the Discharger and the Central Coast Water Board.

**ii. Agreement of Discharger to Implement Compliance Project**

The Discharger represents that: 1) it will spend the Compliance Project Amount as described in this Stipulation; 2) it will provide certified, written reports to the Central Coast Water Board consistent with the terms of this Stipulation and Order detailing the implementation of the compliance project; and 3) Discharger will guarantee implementation of the compliance project by remaining liable for \$18,000 of suspended administrative liability until the compliance project is completed and accepted by the Central Coast Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Central Coast Water Board has the right to require an audit of the funds expended by it to implement the compliance project. Discharger shall permit inspection of the compliance project by the Central Coast Water Board staff at any time without notice.

**12. AUDITS AND CERTIFICATION OF COMPLIANCE PROJECT**

**A. Certification of Expenditures**

On or before 30 days following completion of the project, Discharger shall submit a certified statement by a responsible agency official representing the Discharger documenting the expenditures by Discharger during the completion period for the compliance project. The expenditures may be external payments to outside vendors or contractors implementing the compliance project. If applicable, the expenditures may include the costs of internal Environmental Management resources and internal Business Unit resources, provided that such expenditures are directly related to development and implementation of the compliance project. In making such certification, the official may rely upon normal agency project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. Discharger shall provide any additional information requested by the Central Coast Water Board staff which is reasonably necessary to verify Discharger's compliance project expenditures.

**B. Certification of Performance of Work**

On or before 30 days following completion of the project, the Discharger shall submit a report, submitted under penalty of perjury,

stating that the compliance project has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Board to evaluate the completion of the compliance project and the costs incurred by the Discharger.

**C. Certification that Work Performed on Compliance Project Met or Exceeded Requirements of CEQA and other Environmental Laws**

On or before 30 days following completion of the project, the Discharger shall submit documentation, if necessary, under penalty of perjury, stating that the compliance project meets or exceeds the requirements of CEQA and or other environmental laws. The Discharger shall, before the compliance project implementation date, consult with other interested State Agencies regarding potential impacts of the compliance project. Other interested State Agencies include, but are not limited to, the California Department of Fish and Game. To ensure compliance with CEQA where necessary, the Discharger shall provide the Central Coast Water Board with the following documents from the lead agency:

- i. Categorical or statutory exemptions;
- ii. Negative Declaration if there are no potential "significant" impacts;
- iii. Mitigated Negative Declaration if there are potential "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts; or
- iv. Environmental Impact Report (EIR) if there are potential "significant" impacts.

**D. Third Party Financial Audit**

In addition to the certification, upon completion of the compliance project and at the discretion of the Designated Water Board Representative, Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Central Coast Water Board staff providing such party(ies)'s professional opinion that Discharger has expended money in the amounts claimed by the Discharger. Such information shall be provided to the Designated Water Board Representative upon request and within three (3) months of the completion of the Discharger's compliance project



obligations. The audit need not address any costs incurred by the Regional Board for oversight.

**13. REGIONAL BOARD ACCEPTANCE OF COMPLETED COMPLIANCE PROJECT**

Upon the Discharger's satisfaction of its obligations under this Stipulation and Order, the completion of the compliance project and any audits, the Designated Water Board Representative, with notice to the regional Enforcement Coordinator, shall request that the Central Coast Water Board issue a "Satisfaction of Order". The issuance of the Satisfaction of Order shall terminate any further obligations of the Settling Discharger and/or the Implementing Party under this Stipulation and Order.

**14. FAILURE TO EXPEND ALL SUSPENDED ADMINISTRATIVE CIVIL LIABILITY FUNDS ON THE APPROVED COMPLIANCE PROJECT**

In the event that Discharger is not able to demonstrate to the reasonable satisfaction of the Central Coast Water Board staff that it has spent the entire Compliance Project Amount for the completed compliance project, Discharger shall pay the difference between the Suspended Administrative Civil Liability and the amount Discharger can demonstrate it actually spent on the compliance project, as an administrative civil liability. The Discharger shall be pay the additional administrative liability within 30 days of its receipt of notice of the Central Coast Water Board's determination that the Discharger has failed to demonstrate that the entire Compliance Project Amount has been spent to complete the compliance project.

**15. FAILURE TO COMPLETE THE COMPLIANCE PROJECT**

If the compliance project is not fully implemented by the Compliance Project Completion Date required by this Stipulation and Order or there has been a material failure to satisfy a Milestone Requirement, the Designated Water Board Representative shall issue a Notice of Violation.

As a consequence, Discharger shall be liable to pay the entire suspended liability or, some portion thereof. The Enforcement Team may act as follows:

- A. The Enforcement Team elects for the payment of the Suspended Liability:** Discharger may not be entitled to any credit, offset, or reimbursement from the Central Coast Water Board for expenditures made on the compliance project prior to the date of the "Notice of Violation" by the Central Coast Water Board. The amount of the suspended liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Central Coast Water

Board. Upon a determination by the Central Coast Water Board of the amount of the suspended liability assessed, the amount owed shall be paid to the State Water Resources Control Board within thirty (30) days after the service of the Regional Water Quality Control Board's determination. In addition, the Discharger shall be liable for the Central Coast Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Discharger's obligations to implement the compliance project.

- B. The Enforcement Team elects for the completion of the compliance project:** The Enforcement Team shall file a "Motion to Enforce the Compliance Project" before the Central Coast Water Board against the Discharger. Upon the identification by the Central Coast Water Board of the remaining work of the compliance project to be performed, the Discharger agrees that the Central Coast Water Board may order the Discharger to perform that work.

**16. CENTRAL COAST WATER BOARD IS NOT LIABLE**

Neither the Central Coast Water Board members nor the Central Coast Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Discharger or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, nor shall the Central Coast Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

The Discharger and the Implementing Party covenant not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the ACL, this Stipulation and Order, or the compliance project.

**17. NO THIRD PARTY RIGHTS**

Nothing in this Stipulation and Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.

**18. EFFECTIVE DATE**

The Effective Date of this Stipulation shall be the date on which the Order is executed by the Executive Officer on behalf of the Central Coast Water Board.

**19. EXTENSION MUST BE IN WRITING**

The Executive Officer may extend any of the due dates in this Stipulation and Order upon the joint request of the Parties. Such extensions must be in writing.

**20. PRESERVATION OF ENFORCEMENT DISCRETION**

This Stipulation and Order relates only to administrative civil liability for violations that were alleged in the Expedited Payment Letter. The Central Coast Water Board and its Executive Officer reserve all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations that occur after the date on which the Assistant Executive Officer signed the Expedited Payment Letter.

**21. IF ORDER DOES NOT TAKE EFFECT**

In the event that this Order does not take effect because it is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to: 1) objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Coast Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the alleged violations in this matter; or 2) laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

**22. AUTHORITY TO BIND**

Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

**23. INTERPRETATION**

This Stipulation shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.

**24. MODIFICATION**

This Stipulation shall not be modified by any of the Parties by oral representation made before or after the execution of this Stipulation and Order. All modifications must be made in writing and approved by the Central Coast Water Board Executive Officer.

**25. COUNTER SIGNATURES**

This Stipulation may be executed by the parties and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED<sup>1</sup>

_____ Michael J. Thomas Assistant Executive Officer On behalf of the Central Coast Water Board Enforcement Team	_____ Date
--	---------------

_____ U.S. Wilson Cuyama Community Services District	_____ Date
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<sup>1</sup> The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS, THE CENTRAL COAST WATER BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

26. The Central Coast Water Board incorporates Paragraphs 1 through 25 by this reference as if set forth fully herein.
27. In accordance with 13385(k), the Central Coast Water Board finds:
  - A. The Discharger serves a small community;
  - B. The Discharger has proposed a compliance project that is designed to correct the Violations within five years;
  - C. The compliance project is in accordance with the State Water Board's enforcement policy; and
  - D. The Discharger has prepared a financing plan.
28. This is an action to enforce the laws and regulations administered by the Central Coast Water Board. The Central Coast Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2), Title 14 of the California Code of Regulations.
29. In adopting this Order, the Executive Officer has considered, where applicable, each of the factors prescribed in California Water Code sections 13327 and 13385(e). The Executive Officer's consideration of these factors is based upon information obtained by the Central Coast Water Board staff in investigating the allegations, and comments provided by the Parties and by members of the public, and finds that settlement of this matter is in the best interest of the People of the State.
30. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Expedited Payment Letter and Paragraph 4 in accordance with the terms of the Order.

Order No. R3-2010-0023                      - 12 -  
Stipulated Administrative Civil Liability Order  
Cuyama Community Services District

**IT IS HEREBY ORDERED**, pursuant to section 13323 of the California Water Code and section 11415.60 of the California Government Code, and on behalf of the California Central Coast Water Quality Control Board.

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Roger W. Briggs  
Executive Officer  
Central Coast Regional Water Quality Control Board

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Date

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Linda S. Adams  
Secretary for  
Environmental Protection

**California Regional Water Quality Control Board  
Central Coast Region  
Enforcement Unit**

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906  
(805) 549-3147 • Fax (805) 543-0397  
<http://www.waterboards.ca.gov/centralcoast>



Arnold Schwarzenegger  
Governor

October 21, 2009

U.S. Wilson  
Cuyama Community Services District  
P.O. BOX 368  
New Cuyama, CA 93254

Via Certified Mail  
7008 1140 0003 4708 7455

**NO. R3-2009-0066, OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM  
RELATING TO VIOLATIONS OF NPDES PERMIT, CUYAMA CSD WWTP, HIGHWAY  
166 & PERKINS ROAD, NEW CUYAMA, CA 93254 (WDR ORDER NO. R3-2007-  
0020, NPDES NO. CA0048089, WDID NO. 3 421003001)**

Dear Mr. Wilson:

This letter is to notify Cuyama Community Services District (hereinafter "Permittee" or "you") of alleged violations of the California Water Code identified in the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) water quality data system and to allow the Permittee to participate in the Central Coast Water Board's Expedited Payment Program to address liability which may be assessed pursuant to Water Code sections 13385 and 13385.1.

**NOTICE OF VIOLATION:**

Based on information in the California Integrated Water Quality System (CIWQS) as of October 19, 2009, the Central Coast Water Board's Assistant Executive Officer alleges that the Permittee has violated the effluent limitations, reporting violations, or Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "A." The Permittee will have the opportunity to address the alleged violations as discussed below.

**STATUTORY LIABILITY:**

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a Mandatory Minimum Penalty of \$3,000 for specified serious and chronic effluent limit violations. The Permittee is also potentially subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, plus ten dollars (\$10) for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by a Regional Water Quality Control Board (Regional Water Board) or the State Water Board (collectively "the Water Boards"), beginning with

the date that the violations first occurred<sup>1</sup>. The formal enforcement action that the Water Boards use to assess such liability is an administrative civil liability complaint, although the Water Boards may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

#### **OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:**

The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Central Coast Water Board's Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Central Coast Water Board enforcement staff makes this Conditional Offer. The Permittee may accept this offer, waive the Permittee's right to a hearing, and pay the mandatory minimum penalty as indicated on Exhibit A, for the violations described in the NOV. If the Permittee elects to do so, subject to the conditions below, the Central Coast Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the Notice of Violation. Accordingly, the Central Coast Water Board enforcement staff will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the Notice of Violation.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the Notice of Violation.

#### **PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:**

If you accept this offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing, (proposed) Order" (Acceptance and Waiver) on or before November 25, 2009. The Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be counter-signed by the Executive Officer and returned to you with an invoice for payment.

If you contest some but not all of the violations identified in the attached Notice of Violation, the Permittee may elect to reserve the right to address the contested matters

<sup>1</sup> Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) The Permittee has not been substantially prejudiced by the passage of time between the date(s) that Permittee reported the violations identified on Exhibit A and the date of this letter. The Permittee was aware of the violations at the time it reported them to the Regional Board. Regional Board staff's limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties is due. For these reasons, any delay is not unreasonable.



penalty for each uncontested violation. If the Permittee chooses this option, please communicate with the staff contact identified below to discuss the mechanism for memorializing that election on or before the due date.

If the Permittee chooses to contest any of the violations alleged in the Notice of Violation, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. Central Coast Water Board staff will evaluate the contested violation and take one of two actions:

- 1) Central Coast Water Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS database, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination;
- 2) Central Coast Water Board staff will determine that the alleged violation is validated, and will notify the Permittee of that determination. The Permittee will be given 30 days from the date of receipt of the Water Board staff determination to submit a supplemental Expedited Payment for those violations. If the Permittee chooses not to make a payment in response to the determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor which can be considered in assessing the liability amount.

#### **CONDITIONS FOR WATER BOARD ACCEPTANCE OF RESOLUTION:**

Federal regulations require the Central Coast Water Board to publish and allow the public 30 days to comment on any settlement of an enforcement action addressing NDPES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, Central Coast Water Board enforcement staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day period, and unless there are new material facts that become available to the Central Coast Water Board, the Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the unresolved violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the Permittee will be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this conditional offer will not in any way be binding or

used as evidence against the Permittee. The Permittee will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Executive Officer, payment of the assessed amount shall be due and payable to the Central Coast Water Board as specified on the invoice that will accompany the Permittee's receipt of the notice of the Executive Officer's execution. The payment period is 30 days. Failure to pay the penalty within the required time period may subject the Permittee to further liability.


**OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT OR COMPLIANCE PROJECT IN LIEU OF ADMINISTRATIVE LIABILITY**

In lieu of the payment of all or a portion of the mandatory minimum penalties, the Permittee may be able to fund a supplemental environmental project as defined in the State Water Board's Enforcement Policy or a compliance project pursuant to Water Code section 13385(k) if it can demonstrate status as a publicly owned treatment works serving a small community with a financial hardship. If the Permittee wishes to discuss either of these options, please speak with the contact person identified in this correspondence.

**CONTACT PERSON**

Should you have any questions about the Notice of Violation or the Conditional Offer, please contact **Sandy Cheek at (805) 542-4633** regarding this matter.

Sincerely,

  
Michael J. Thomas  
Assistant Executive Officer

Encl. – Exhibit "A" - Notice of Violation  
Acceptance of Conditional Resolution  
and Waiver of Right to Hearing; (Proposed) Order

**Exhibit "A"**  
**City of Cuyama**  
**Cuyama WWTP**

NOTICE OF VIOLATIONS (1 January 2008 – 21 August 2008)  
MANDATORY MINIMUM PENALTIES WITHOUT ENFORCEMENT

The Enforcement Staff of the Regional Water Quality Control Board, Central Coast Region has reviewed information submitted by this facility to determine whether the discharger is subject to mandatory minimum penalties (MMPs) pursuant to subdivisions (h) and (i) of California Water Code section 13385. The following table lists this facility's alleged violations of subdivisions (h) and (i) of California Water Code section 13385, from January 1, 2008, through August 21, 2008, which have not been subjected to the assessment of MMPs by the Water Board. Final calculation of MMP amounts owed and descriptions of the abbreviations that appear in the table are also listed below. For additional information about the alleged violations listed in the table, please refer to the SWRCB Public Reports webpage [http://www.waterboards.ca.gov/water\\_issues/programs/ciwqs/publicreports.shtml](http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml); choose the "MMP Report" link located under the "Enforcement Reports" category. Once in the Public Reports search page, enter the search criteria that correspond to your facility to access the list of violations:

Violation ID	Occurred Date	Type	MMP Type	Violation Description
755646	2/6/2008	CAT1	Serious	Bromodichloromethane limit is 0.56 µg/L and reported value was 2.4 µg/L.
755647	2/6/2008	CAT1	Serious	Bromodichloromethane limit is 1.13 µg/L and reported value is 2.4 µg/L.
755648	2/6/2008	CAT1	Serious	Dibromochloromethane limit is 0.40 µg/L and reported value is 4.1 µg/L.
755649	2/6/2008	CAT1	Serious	Dibromochloromethane limit is 0.81 µg/L and reported value is 4.1 µg/L.
791131	8/21/2008	CAT2	Serious	Bromodichloromethane limit is 0.56 µg/L and reported value is 0.74 µg/L.
791134	8/21/2008	CAT2	Serious	Dibromochloromethane limit is 0.40 µg/L and reported value is 1.4 µg/L.

**Mandatory Minimum Penalty Amount Owed for Effluent Violations**

(6 Serious Violations + 0 Non-Serious Violations) × \$3,000 = \$18,000 to the Cleanup & Abatement Account

**Mandatory Minimum Penalty Amount Owed for Reporting Violations**

(0 Late Reporting Violations + 0 Deficient Reporting Violations) × \$3,000 = \$0 to the Cleanup & Abatement Account

**Definition of Acronyms & Abbreviations**

CIWQS	California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities.
Violation ID	Identification number assigned to a violation in CIWQS.
Occurrence Date	Date that a violation actually occurred. For continuing violations, such as a monthly average, the last day of the reporting period is used. If the occurrence date is unknown, the date is entered as the day it was first discovered by staff, the Discharger, or a third party. For deficient or late reports, the occurrence date is the day after the report was due.
Type	Classification of a violation. Two types of violations relate to MMPs: 1) Late Reporting Violations (LREP, DREP) 2) Effluent Violations (ATOX, CTOX, CAT1, CAT2, OEV)
LREP	Late reporting violation. Every 30 days a report is late counts as one late reporting violation.
DREP	Deficient reporting violation. This will only result in an MMP if the report is so deficient as to make determination of compliance impossible for that reporting period.
DMR	Discharge Monitoring Report
ATOX	Violation of an acute toxicity effluent limitation.

CTOX	Violation of a chronic toxicity effluent limitation.
CAT1	Violation of an effluent limitation for a Group I pollutant by more than 40%.
CAT2	Violation of an effluent limitation for a Group II pollutant by more than 20%.
OEV	Violation of any constituent-specific effluent limitation not included in Group I or Group II.
MMP	mandatory minimum penalty
MMP Type	Classification of the type of MMP violation.
CHRON	Chronic violation as defined by California Water Code section 13385 (i). To be counted as a chronic violation, there must be 3 preceding violations within a 180 day period. The fourth non-serious violation that occurs within the 180 period is an MMP violation.
SIG	Serious violation as defined by California Water Code section 13385 (h). Waste discharge exceeds the effluent limitation for a Group I pollutant by 40% or more (CAT1), or a Group II pollutant by 20% or more (CAT2). Also defined by California Water Code section 13385.1 as a failure to file a discharge monitoring report pursuant to Section 13383 for each period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.
Violation Description	Narrative description of the violation.
M	Effluent exceeds limit for monthly reporting period.
Q	Effluent exceeds limit for quarterly reporting period.
S	Effluent exceeds limit for semi-annual reporting period.
A	Effluent exceeds limit for annual reporting period.
IM	Effluent exceeds instantaneous maximum limitation.
DM	Effluent exceeds daily maximum limitation.
AW	Effluent exceeds average weekly limitation.
AM	Effluent exceeds average monthly limitation.
2Q	2 <sup>nd</sup> Quarter

Expedited Payment Letter R3-2009-0066  
NPDES Permit No. R3-2007-0020

**ACCEPTANCE OF CONDITIONAL RESOLUTION  
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

CUYAMA WWTP  
EPL R3-2009-0066  
NPDES Permit No. R3-2007-0020

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Coast Regional Water Quality Control Board (Central Coast Water Board), Cuyama WWTP (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Central Coast Water Board to dispute the allegations of violations described in the Notice of Violation (NOV) which is attached hereto as Exhibit "A" and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Coast Water Board to assert jurisdiction over the alleged violations through its Enforcement Staff. The Permittee agrees to pay the penalties authorized by California Water Code section 13385, as indicated on the attached invoice (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to the Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV. The Permittee understands that once the Acceptance and Waiver is executed by the Executive Officer of the Central Coast Water Board, the full payment required by the deadline set forth on the attached invoice is a condition of this Acceptance and Waiver. The Permittee shall pay the Expedited Payment Amount by check payable to the SWRCB Cleanup and Abatement Account, with the NPDES number noted on the check. The payment shall be submitted to the Central Coast Water Board as specified on the enclosed invoice.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the Notice of Violation.

Upon execution by the Permittee, the Acceptance and Waiver shall be returned to:

Harvey Packard  
Enforcement Coordinator  
Central Coast Water Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

Expedited Payment Letter R3-2009-0066  
NPDES Permit No. R3-2007-0020

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Central Coast Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of this enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Central Coast Water Board, will be published as required by law for public comment.

If no comments are received within the notice period that cause the Executive Officer to reconsider the Expedited Payment Amount, the Executive Officer will execute the Acceptance and Waiver.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the Central Coast Water Board Enforcement Staff's offer to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Central Coast Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee understands that once the Acceptance and Waiver is executed by the Executive Officer of the Central Coast Water Board, the full payment required by the deadline set forth on the attached invoice is a condition of this Acceptance and Waiver.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

\_\_\_\_\_  
(Name of Permittee)

By: \_\_\_\_\_  
(Signed Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed or typed name)

\_\_\_\_\_  
(Title)

Expedited Payment Letter R3-2009-0066  
NPDES Permit No. R3-2007-0020

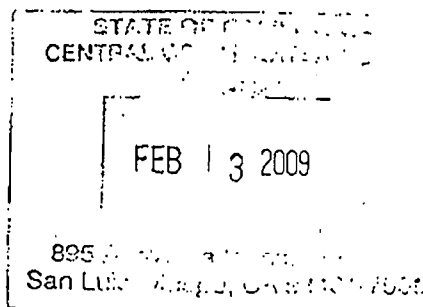
IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Roger W. Briggs  
Executive Officer  
Central Coast Regional Water Quality Control Board

# DUDEK

621 CHAPALA STREET  
SANTA BARBARA, CALIFORNIA 93101  
T 805.963.0651 F 805.963.2074



February 4, 2009

Regional Water Quality Control Board, Central Coast Region  
Attention: Harvey Packard and Michael J. Thomas  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

**SUBJECT: Proposed MMP Order NO. R3-2009-0005, Cuyama Community Services District (CCSD); Compliance Project in Lieu of Penalties**

Dear Mr. Packard and Mr. Thomas:

Thank you for your letter dated February 2, 2009 in response to our letter of January 30, 2009 for a project in lieu of penalty under Water Code Section 13385(k)(1) and (2). We are happy that you are consonant with us on the following: 1) that the project is in accordance with the State Water Resources Control Board Policy; and 2) that CCSD meets the water code's definition of a small community. This letter will address the concerns your Board has raised in its letter, namely compliance of the project within the allotted time frame of 5 years, the financing plan and a mechanism for assurance that the penalty funds are applied to the project.

1. The entire time frame for design and construction of the project is approximately 18 months, which is only a fraction of the 5 year time frame specified by the water code. Presently, the Prop 50 funds are on hold, however, they have not been terminated entirely. We have great confidence and positive feedback from the State Water Resources Control Board that Prop 50 funds will be made available in the near future, in turn funding the WWTP and its beneficial upgrades to the existing facility. In fact, our first invoice against the Prop 50 funds has already been submitted and CCSD has already demonstrated over 100% of its required "match" funds.
2. While we do agree that the timing is presently uncertain, as stated above we do have good indications that the funds encumbered under Prop 50 for this project will be provided in the foreseeable future.

For a more detailed outline of the financing plan, please see the attached signed and executed agreement with the State (Component 9, pages 9 and 23 of the agreement). Moreover, the community of Cuyama has been categorized as a "Disadvantaged Community" under the Prop 50 Guidelines. The CCSD is and continues to use the limited funds that it has prudently for the



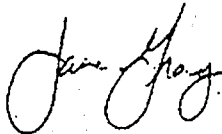
Regional Water Quality Control Board  
Proposed MMP Order NO. R3-2009-0005, Cuyama Community Services District (CCSD): Compliance Project in  
Lieu of Penalties  
February 4, 2009

benefit of the community of Cuyama. The project in its entirety is projected to cost \$318,659., which is well over the costs associated with the pending penalty.

3. As indicated above, the project costs far exceed the penalty amount thereby ensuring that any penalty amount would go toward the improvements proposed in the project. In satisfaction of the Prosecution Team's request that CCSD provide a mechanism to ensure that penalty funds are applied to the project, CCSD would be happy to provide the RWQCB a copy of invoices submitted to the RWQCB. Further, we would be more than happy to provide you with an updated schedule for the project's completion based upon the schedule that was agreed to in the signed and executed agreement with the State (attached).

In closing, we hope that this letter provides you with enough information to proceed and are available to discuss the content or answer any questions you may have. I can be reached at 805.963.0651 ext. 3531 or via email: [jgray@dudek.com](mailto:jgray@dudek.com). Thank you for your time and attention.

Sincerely,



Jane Gray  
Environmental Planner

Cc: U.S. Wilson, Cuyama Community Services District  
Roger Briggs, Regional Water Quality Control Board, Central Coast Region  
Frances McChesney, State Water Resources Control Board  
Kelley List, State Water Resources Control Board  
Matt Naftaly, Water Agency Manager, Santa Barbara County  
Jorge Leon, State Water Resources Control Board

**COMPONENT 9: CUYAMA COMMUNITY SERVICES DISTRICT WASTEWATER TREATMENT PLANT  
 EFFLUENT DISINFECTION PROJECT**

Item	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
<b>EXHIBIT A – SCOPE OF WORK</b>			
1.	PLANS AND COMPLIANCE REQUIREMENTS		
1.1	GPS Information	Day 90 Prior to first disbursement	
1.2	Project Assessment and Evaluation Plan (PAEP)	Day 30	
	Assessment of PAEP Status		Annually by 01/15
1.6	Copy of CEQA/NEPA Documentation		12/2008
1.7	Financial Statements		12/2008
1.9	Applicable Permits		12/2009
2.	WORK TO BE PERFORMED BY GRANTEE		
2.10.1	Submit 100% Design Plans and Specifications		09/2009
2.10.2	Submit All Permits		12/2009
2.10.3	Awarded Bid Documents		12/2009
2.10.3	Written notification of Awarded Prime Construction Contractor and Initiation of Construction		02/2010
2.10.8	As-Built Drawings		08/2010
<b>EXHIBIT B – INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS</b>			
6.2	Grant Summary Form	Day 90	
6.3	NRPI	Before final component invoice	
6.4	Draft Component Report		12/2010
6.5	Final Component Report		01/2011